

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

| | | |
|----------------------------|---|-------------------|
| DAVID AND SUZANNE DOUGLAS, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | 6:10-cv-03379-RED |
| |) | |
| GREEN TREE, |) | |
| |) | |
| Defendant. |) | |

**DEFENDANT’S MOTION TO DISMISS OR
IN THE ALTERNATIVE FOR A MORE DEFINITE STATEMENT**

COMES NOW Defendant, Green Tree (“Defendant”), by and through counsel, and for its Motion to Dismiss or in the Alternative for a More Definite Statement of the Petition of Plaintiff David Douglas and Suzanne Douglas (“Plaintiffs”) hereby states as follows:

1. On or about September 16, 2010, Plaintiffs filed their Petition in this matter listing several allegations including breach of fiduciary duty, negligence, fraud, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress and violations of the Truth in Lending Act.
2. Plaintiffs claim that Defendant was served on September 22, 2010 by virtue of the Proof of Service filed by Plaintiffs on October 15, 2010. Doc. 5 at pg 2. However, the Proof of Service has not been fully completed. The Proof of Service states “I personally served the summons on the individual at (*place*) Green Tree on (*date*) 22 Sept....” Doc. 5 at pg 2. Defendant notes that there is no individual defendant in this matter, only an entity.
3. In the event that Plaintiffs wished to effect service on Defendant, on the Proof of Service it would have been proper for them to specify the name of the person who is designated by law to accept service of process on behalf of Defendant. That portion of the Proof of Service

is also incomplete, and reads “I served the summons on (*name of individual*) Green Tree, who is designated by law to accept service of process on behalf of (*name of organization*) _____ on (*date*) _____.” Doc. 5 at pg 2.

4. Counsel for Defendant is only aware of a copy of Plaintiffs’ Petition having been mailed to Defendant.

5. As a result of this incomplete Proof of Service, Defendant contends that it has not been served in accordance with Federal Rule of Civil Procedure 4(l) and that until service has been effected upon Defendant pursuant to the Federal Rules of Civil Procedure, this Court does not have personal jurisdiction over Defendant, and this action should be dismissed.

6. Further, Plaintiffs’ Petition should be dismissed on several grounds, including but not limited to failure to effectively state a claim pursuant to Federal Rule of Civil Procedure 9(b) and formatting deficiencies pursuant to Federal Rule of Civil Procedure 8(d) and 10(b).

7. In the alternative, Defendant respectfully moves this Court for a more definite statement which clarifies ambiguities in Plaintiffs’ Petition pursuant to Federal Rule of Civil Procedure 12(e).

8. Defendant hereby incorporates by reference its Suggestion in Support of its Motion to Dismiss or For a More Definite Statement filed contemporaneously herewith as if fully set out herein.

WHEREFORE, Defendant respectfully moves this Honorable Court to dismiss Plaintiffs’ Petition with prejudice, each party to bear its own costs, or in the alternative for a more definite statement of Plaintiffs’ Petition, and for such other relief as this Court deems just and proper.

Respectfully Submitted,

/S/David G. Wasinger

David G. Wasinger, MoBar #38253

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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was submitted via the Court's CM/ECF system to all parties receiving notice thereby. A true and accurate copy was also sent by First Class US Mail on this 15th day of October, 2010 to the following:

David Douglas
2300 E. Hartley
Ozark, MO 65721
Plaintiff

Suzanne Douglas
2300 E. Hartley
Ozark, MO 65721
Plaintiff

/S/David G. Wasinger